IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 373

MARTIN LUDWIG COHNSTAEDT,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

PETITIONER'S REPLY BRIEF

The Government makes two points: that this Court did not intend in the *Girouard* case to extend the right of citizenship to persons who would not serve as non-combatants, and that Congress has indicated the same intent by certain additions to the law in 1942. As to the first point, this Court alone can determine what its intention was. To what we said before we can add only that we do not quite understand the basis for the Government's statement (p. 11) that this Court did not overrule the *Macintosh* and *Schwimmer* cases. We had thought the contrary was clear.

As to the 1942 provisions referred to (p. 12), these were, of course, before this Court when it decided the *Girouard* case and one of them was in fact referred to by Chief Justice Stone in his dissent (328 U. S. at 77). It seems to us that these amendments support petitioner's view rather

than that of the Government. The amendments are parts of provisions granting special privileges to persons who served in the armed services. The provisos make it clear that conscientious objectors who performed no military service and wore no uniform should not be considered eligible for these special privileges. The inference is that but for the provisos such persons might have been considered eligible for the special privileges. If persons like petitioner were automatically barred from citizenship because of the form of the oath or their supposed lack of attachment to the principles of our Government, it would certainly not have been necessary for Congress expressly to exclude them from the special privileges granted to veterans, since veterans are required to take the oath and to show their attachment to our Government.

It is significant, moreover, that while Congress thought it necessary to exclude certain groups from those special privileges, it did not consider it appropriate to exclude them from all right to become citizens. Such right must, therefore, be deemed to exist.

It is respectfully submitted that the question presented is of importance and should be fully considered by this Court.

Osmond K. Fraenkel,
Counsel for Petitioner.

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